



INDUSTRY CIRCULAR

**DEPARTMENT OF
THE TREASURY**

Bureau of Alcohol, Tobacco and Firearms

Washington, D.C. 20226

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DISTILLED SPIRITS FOR FUEL USE

Proprietors of Distilled Spirits Plants and Others
Concerned:

Purpose. The Bureau issues this circular in order to inform proprietors of distilled spirits plants of changes in the qualification requirements prescribed in Subchapter B of Chapter 51 of the Internal Revenue Code of 1954.

Background. The Crude Oil Windfall Profit Tax Act of 1980 (Public Law 96-223) was signed by President Carter on April 2, 1980. The new law amends the Internal Revenue Code of 1954 by adding a new Section 5181 relating to distilled spirits for fuel use. The portion of the law which pertains to distilled spirits plants becomes effective on July 1, 1980. There are provisions in the new law which are of particular interest to proprietors of distilled spirits plants and experimental distilled spirits plants qualified for the production of ethyl alcohol for fuel use.

New 26 U.S.C. 5181 authorizes the Secretary of the Treasury to provide by regulation for the waiver of the requirements prescribed in Subchapter B of Chapter 51 of the Code. This section authorizes the establishment of a distilled spirits plant solely for the purpose of producing, processing, and storing, and using or distributing, distilled spirits to be used exclusively for fuel use. Temporary regulations to implement this section of the law have been drafted and are being prepared for publication in June. The temporary regulations will become effective on July 1, 1980. Final regulations will be issued after consideration of comments received during a public comment period.

Section 5181 contains special rules which apply to small volume alcohol fuel producers, i.e., distillers who produce a total of not more than 10,000 proof gallons of ethyl alcohol per calendar year.

Production also includes receipts from other plants. The proprietor of a small alcohol fuel plant is not required to file a bond.

The new law requires that the Bureau of Alcohol, Tobacco and Firearms process expeditiously all applications for permits for alcohol fuel plants, large, medium and small alike. For the small plants, however, the law specifies that within 15 days of receipt of an application, the Bureau must notify the applicant whether the application is acceptable, i.e., that the application is submitted in the form and manner and contains the information required by regulations. Within 45 days of sending notification to the applicant that a completed application has been received, the Bureau must either approve or deny approval of the application. The law provides for automatic approval of the application if the Bureau fails to act on the application within the specified time period. In any instance where the Bureau fails to act timely, it is incumbent upon the applicant to furnish documentation of receipt, e.g., a certified or registered mail return receipt of the application by the Bureau.

The temporary regulations will provide a further breakdown between classes of alcohol fuel producers by distinguishing between medium plants, i.e., plants producing more than 10,000 but not more than 500,000 proof gallons of ethyl alcohol per year, and large plants, those producing more than 500,000 proof gallons annually. These regulations also will require bonding sums, more detailed information for qualifying documents, and more frequent reporting of operations for medium and large alcohol fuel producers.

All alcohol fuel plants are required to render the ethyl alcohol unfit for beverage use before removal from the premises. Once rendered unfit, such spirits may be withdrawn free of tax for fuel use. However, spirits transferred in bond between plants and spirits used for fuel on the plant premises need not be rendered unfit. The law provides that for purposes of transfer-in-bond, the premises of small, nonbonded plants are to be treated as bonded premises.

Effect of the new law on existing experimental distilled spirits plants. The new law simplifies the regulations for alcohol fuel producers. Consequently, the continued operation of an alcohol fuel plant as an experimental distilled spirits plant (XDSP) would not be advantageous to the proprietor. The Bureau expects that a proprietor presently holding an experimental distilled spirits plant authorization for alcohol fuel use will take advantage of the opportunity afforded by the statutory changes to obtain an alcohol fuel producer's (AFP) permit.

Effective July 1, 1980, any person who presently holds an experimental distilled spirits plant permit issued under the provisions of 26 U.S.C. 5312 for alcohol fuel production will be automatically considered to have an approved application to operate an alcohol fuel plant under the provisions of 26 U.S.C. 5181. The Bureau will issue a notice to advise such proprietors of the changes in law and regulations and the change in the statutory authority for the permits. The notice will be issued prior to July 1, 1980, and will advise any proprietor who desires to continue operations under an experimental distilled spirits plant authorization that a letterhead request may be filed for continuation of such status under 26 U.S.C. 5312. Present restrictions will continue in force for any XDSP proprietor who elects to retain such status. Unless a permittee notifies the Bureau that he intends to continue to operate under the experimental authorization, the Bureau will automatically change the status of the permit from an experimental distilled spirits plant (XDSP) to an alcohol fuel producer's (AFP) permit.

A bond will not be required for a proprietor of an alcohol fuel plant which produces not more than 10,000 proof gallons of ethyl alcohol per calendar year (including all receipts from other plants). Proprietors of small plants who have posted bonds may obtain refunds of cash bonds or may cancel surety bonds. Proprietors of larger plants may be eligible to reduce their bond coverages substantially. Regional regulatory administrators will notify proprietors of the procedures to be followed.

A new permit will not be issued immediately to a proprietor who presently produces alcohol fuel under an experimental distilled spirits plant permit. Such a proprietor may continue to conduct alcohol fuel plant operations using the experimental permit. Effective July 1, 1980, such operations will be considered to be authorized under the provisions of 26 U.S.C. 5181 unless the proprietor specifically requests authorization to continue operations under the experimental distilled spirits plant provisions of 26 U.S.C. 5312. Registry numbers for converted experimental distilled spirits plants which produce ethyl alcohol exclusively for fuel use will be changed from "X-DSP-__" to "AFP-__". A new permit entitled "Alcohol Fuel Producer" will be furnished to each permittee approximately 60 days prior to the expiration date shown on the previously approved experimental permit.

Effect of law on existing commercial distilled spirits plant operations. A proprietor holding an operating permit issued under 26 U.S.C. 5171 and who produces ethyl alcohol exclusively for fuel use may wish to requalify under the provisions of 26 U.S.C. 5181. Forms for requalification will be available at ATF regional offices.

Proprietors who process distilled spirits for industrial use or who import distilled spirits or denatured spirits for fuel use will have to modify their monthly reports of operations beginning with the reports for the month of July 1980. The modifications prescribed below will facilitate the reporting of receipts of imported alcohol and denatured spirits from customs custody for fuel use as well as the reporting of completely denatured spirits which are withdrawn for fuel use.

(1) ATF F 5110.11, Monthly Report of Storage Operations, will have to be modified by proprietors to report by separate entry on line 5 the quantity of imported alcohol for fuel use received from customs custody. This quantity must be excluded from that reported on line 3--Received from customs custody.

(2) ATF F 5110.28, Monthly Report of Processing (Bottling) Operations, will have to be modified by proprietors to report by separate entry on either line 6 or line 7 the quantity of imported alcohol for fuel use received from customs custody. This quantity must be excluded from that reported on line 2--Received.

(3) ATF F 5110.43, Monthly Report of Processing (Denaturing) Operations, will have to be modified by proprietors to report by separate entry on line 4 the quantity of imported denatured spirits for fuel use received from customs custody. This quantity must be excluded from that reported on line 3--Received by transfer in bond. In addition, ATF F 5110.43 must be modified to report by separate entry on line 10, column (b), the quantity of completely denatured alcohol withdrawn for fuel use to dealers, users, and the United States. This quantity must be excluded from that reported in column (b) of line 6--To dealers and users, or line 7--Removed for use of U.S.

These monthly reports of operations are currently being revised. Upon completion of printing, the Bureau will forward copies of these forms to proprietors. Additional copies of the forms may be ordered from the ATF Distribution Center, 3800 S. Four Mile Run Drive, Arlington, Virginia 22206. Until receipt of the revised printing of these forms, proprietors will have to modify the current editions of the monthly reports of operations in order to reflect data related to alcohol fuel production.

Effect of law on applicants for alcohol fuel plants. Any person who files for an experimental distilled spirits plant permit or distilled spirits plant operating permit prior to July 1, 1980, should be aware of the impending changes in law in order to take advantage of the opportunities afforded by the provisions of new Section 5181. One important change is that a producer of not more than 10,000 proof gallons of ethyl alcohol per calendar year will no longer need to file a bond. Applicants for operating permits should also be aware of the changes in law.

Transfers-in-bond between plants. The regulations will permit transfers between alcohol fuel plants as well as between plants qualified under 26 U.S.C. 5171 and alcohol fuel plants. Where a plant qualified under 26 U.S.C. 5171 is involved, procedures and forms are required as provided in Title 27, Code of Federal Regulations, Part 19, Section 501 et seq. The spirits transferred to a plant qualified under 26 U.S.C. 5171 are restricted to fuel use and the proprietor must account separately for such spirits and ensure that the spirits are used only for fuel purposes. For transfers between two alcohol fuel plants, the regulations will require a commercial record, e.g., an invoice or bill of lading, to document each transaction.

Importation of ethyl alcohol for fuel use. A permittee qualified as an alcohol fuel producer under the provisions of 26 U.S.C. 5181 may receive shipments of imported alcohol provided the alcohol was not produced from petroleum, natural gas, or coal. However, a person who files application to establish a plant solely for the receipt and subsequent denaturation of imported ethyl alcohol must be qualified as a warehouseman and processor under the provisions of 26 U.S.C. 5171. A person so qualified could transfer the imported ethyl alcohol directly from customs custody into ATF bond, denature the alcohol in accordance with the formulas prescribed in 27 CFR, Part 212, and distribute the denatured alcohol for fuel use.

Inquiries pertaining to this matter should be addressed to the Assistant Director (Regulatory Enforcement), ATTN: Alcohol Fuels Coordinator, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (telephone number 202-566-7531).


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